In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No.

J. R. MASON,
Petitioner,
vs.
ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

FACTUAL BACKGROUND OF THE CASE.

A statement of the facts surrounding the case is made in the preceding petition.

I.

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE QUESTION OF "INTERFERENCE" WAS FORECLOSED BY THE APPEAL FROM THE INTERLOCUTORY DECREE.

As the first and second questions involve the same propositions of law, they are discussed together under this heading.

The dominating question is presented for the first time, under the amended Chapter IX, as an actual controversy from a final decree rises above a mere question of legality. The decree, by its terms, interferes with political and governmental powers of respondent, raises squarely the proposition of whether we continue a federation of sovereign States, embodying the principles and ideals of local self-government or whether our dual form of government can be centralized. Your petitioner is submitting this petition in the full belief that this honorable court is opposed to any break in the historic doctrine of reciprocal immunity, that would contravene decisions which for so long have clearly marked the boundaries of this fundamental constitutional limitation.

The final decree has released and discharged respondent from its duty to exercise the inexhaustible power of direct taxation, confided by the State, which power is, we respectfully submit, not only political and governmental, but the highest attribute of sovereignty. The decree furthermore provides that the bonds involved in the plan of composition are annulled and will escheat to respondent and become wholly void, after one year.

The bonds involved are in no sense of the word a mortgage. They constitute general obligation municipal bonds, payable from unlimited ad valorem taxes which the law applicable requires to be levied annually against all privately held land (improvements are exempt) until every bond is paid.

They are thus entirely different obligations from special assessment bonds issued in many other States, and which other bonds are payable from assessments usually limited to benefits received by the land holder.

Farwell v. San Jacinto & Pleasant Valley Irrigation District, 49 Cal. App. 167, 192 P. 1034;
Rialto Irrigation Dist. v. Stowell, 246 Fed. 294;
American Securities Co. v. Forward, 220 Cal. 566, 32 P. (2d) 343 (affirmed sub. tit. *Irones v. American Securities Co.,* 294 U.S. 692, 55 S. Ct. 403).

Per contra: Halifax Drainage District v. State, 185 So. 123, 130 (Florida Supreme Court).

The State Supreme Court, six months after the *Bekins* decision, supra, ruled squarely that all lands escheating to respondent for delinquent taxes are lands "owned by the State", dedicated as a "Public Trust", and as such are exempt from all taxation and also from execution, and that respondent has as full and complete right to "hold, use, manage, occupy, possess, sell or lease" land escheating to it, and to "the rents, issues and profits thereof" as any private landlord. In Stat. of California, 1909, p. 1075, it was enacted that no property owned by respondent may be ever sold, unless "no longer necessary to be retained for the uses and purposes" of the Act.

In the first case below, the court held squarely that the repayment of money borrowed is one of the "uses and purposes of the Act". Also see Stats. of

California, 1911, p. 512, subjecting all property of respondent to the "regulation and control of the State".

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 465, 85 P. (2d) 116;

El Camino Irr. Dist. v. El Camino Land Corp., 12 Cal. (2d) 378, 85 P. (2d) 123;

Moody v. Provident I. D., 12 Cal. (2d) 389, 85 P. (2d) 132;

Glenn Colusa I. D. v. Ohrt, 31 Cal. App. (2d) 619, 88 P. (2d) 763;

Anderson Cottonwood I. D. v. Klukkert, 13 Cal. (2d) 191, 88 P. (2d) 685.

Before these far-reaching decisions, it had been contended that the "sole" security for such bonds was the power of taxation, and that once the landholders quit paying, the bonds were mere pieces of paper. This argument rested upon dicta in the *Mulcahy v. Baldwin,* 216 Cal. 517, 15 P. (2d) 738 case, where the court had said that bondholders "have the right to enforce their demands solely by an annual assessment on the lands in the District. Such is their contract."

We shall undertake to convince the court that this decree constitutes a violation of the explicit prohibition contained in Section 403, subsection (c), which enjoins that the court

> "* * * shall not, by any order or decree, in the proceedings or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; * * *".

In the *Ashton* case (298 U.S. 513), it was declared:

> "The especial purpose of all bankruptcy legislation is to interfere with the relations between the parties concerned—to change, modify or impair the obligation of contracts. * * * Our especial concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted."

In the *U. S. v. Bekins,* 304 U.S. 27 case, it was held:

> "In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection."

In *Nashville, Chicago & St. L. R.R. Co. v. Walters,* 294 U.S. 405, 415, it was declared:

> "A Statute valid as to one set of facts may be invalid as to another," and "* * * a statute valid, when enacted, may become invalid by a change in the conditions to which it is applied."

The decision of the Circuit Court of Appeals disposes of the above question by referring to the decision in the companion case, decided at the same time, *Mason v. Merced Irrigation District,* No. 9955 (see appendix page iii), wherein the court says:

> "If there was any interference of the nature complained of, the interference was effected by the interlocutory decree. It was that decree which declared the plan of composition to be binding on the bondholders and which relieved the district from the necessity of levying taxes to pay the bonds. The final decree determined nothing

except that the district had carried the interlocutory decree into effect."

The final decree was the first judicial act of the District Court that interfered with the taxing powers of the district. The interlocutory decree acted only on the bondholders, it did not by any positive ruling release the district of its obligations. A reading of that interlocutory decree (R. 46-58) will demonstrate that no attempt is made therein to control or in any wise interfere with the district in its "political or governmental powers" or with its "property or revenues * * * necessary to essential governmental purposes". The injunction of the interlocutory decree operated against the holders of the bonds pending the entry of the final decree.

The final decree (R. 204-211) recites, among other things, first, the fact of the filing of the petition for a composition of indebtedness; that the offer or plan of composition was accepted by the required number of holders, that it was fair, equitable and just and did not discriminate unfairly.

It ordered, adjudged and decreed, among other things, "that all such outstanding old obligations of the petitioning district which are not so presented to the registrar within 12 months from the date hereof shall thereafter be forever barred from participating in the plan of composition or in the funds held in the registry of this court"; and further, "that all old bonds and other obligations of the petitioning district affected by the plan of composition approved

in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforcible obligations of the petitioning district except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers or against the property situated therein or the owners thereof".

All of the foregoing is new matter first embodied in the final decree and none of which was referred to in the interlocutory decree. The provisions of the interlocutory decree do not operate upon the respondent district. Until the entry of the final decree the respondent district was not relieved of its obligation to levy taxes to service the bonds of the petitioner.

It will be noted that the Appellate Court did not pass upon the question of interference and seems to concede that whatever interference there may have been cannot now be complained of because of the fact that the interlocutory decree is final.

The statute in question forbids interference by any order or decree of the court whether interlocutory or final, and even conceding for the purpose of argument that there may have been a practical interference by the terms and provisions of the interlocutory decree, the act still permits the petitioner herein to complain of any interference attempted by the final decree. Failure to have complained against any al-

leged interference resulting from the interlocutory decree does not foreclose the petitioner of his right to complain of the final decree.

The final decree serves to relieve the respondent from its duty to annually levy and collect taxes and perform the other political and governmental powers irrevocably confided to it by its creator, the State of California. It will operate to curb the tax rate to be levied through the years to come. This was not effected by the interlocutory decree.

If there is, in fact, an interference with the respondent district as a result of any decree there is a violation of the statute.

On February 2, 1942, this court in the case of *Cloverleaf Butter Co. v. Patterson,* said the following:

> "Our duty to deal with contradictory functions of state and nation on any occasion and particularly when one or the other is challenged by private interests, calls for the utmost effort to avoid conclusions which interfere with the governmental operations of either. Nothing could be more fertile for discord, however, than a failure to define the boundaries of authority."

"The decision below is in direct conflict with that of the Circuit Court of Appeals of the Eighth Circuit in *Spellings v. Dewey,* 122 F. (2d) 652."

In conclusion we submit that there has been an interference with the political and governmental powers of the respondent district; that this was effected by the final decree.

II.

THE COURT ERRED IN ENTERING THE FINAL DECREE DETERMINING THAT THE PLAN WAS FAIR, EQUITABLE AND FOR THE BEST INTERESTS OF CREDITORS.

The findings of fact contained a declaration "said plan is fair, equitable and for the best interests of its creditors". (R. 40.) The interlocutory decree follows the same language. The final decree (R. 204) declares that the plan of composition "is fair, equitable and just". Petitioner respectfully represents that there is nothing whatever in the record to support this adjudication except the decree and findings. All are in the same form. This is a mere conclusion of law, as the words "fair and equitable" are words of art and as findings impart nothing whatsoever. (*Case v. L. A. Lumber Products Co.*, 308 U. S. 106.)

The decree, it would seem, must be based upon findings which would determine all vital issues and include true values of taxable property, values of tax liens and lands owned, and other assets, specifically covering the ultimate facts upon which the composition proposal is based. (*In re Chicago M. St. P. & P. R. Co.*, 124 Fed. (2d) 754.)

The cases on municipal bankruptcy decided by the Ninth Circuit Court of Appeals uniformly hold that public bankruptcy is different from private bankruptcy and that different rules apply. (*Newhouse v. Corcoran*, 114 Fed. (2d) 690.) This point as to the necessity for special findings has been raised several times by parties in the Ninth Circuit Court of Appeals, but this court has never passed upon the ques-

tion directly except by implication in denying petitions for writ of certiorari. The instant case was decided March 21, 1942. On April 16, 1942, the same court decided the case of *Lorber v. Vista Irrigation District,* No. 9873, ... Fed. (2d) ....., and said:

> "Since our decisions in the cited water district cases were handed down, the Supreme Court decided the case of Consolidated Rock Company v. Du Bois, supra, which case would indicate that in order to 'exercise the informed, independent judgment * * * which appraisal of the fairness of a plan of reorganization entails', the trial court should make some finding to support a conclusion that the payments provided for in the plan of composition are all that the District is reasonably able to pay in the circumstances."

There is thus a conflict in the decisions of the lower court, or a reversal of its former position.

The only difference is that in the instant case the appeal is from the final decree.

It has been held that an interlocutory decree is not "final" under this act. (*American United Life Ins. Co. v. Haines City,* 117 Fed. (2d) 574.)

It is respectfully represented that the rule as to special findings ought to be at least as exacting in municipal bankruptcy as it is in private bankruptcy, and that one of the real purposes for requiring special findings is to minimize injustices and enable the Appellate Court to pass upon the judgment and conclusions of law without examining all of the evidence. (*Consolidated Rock Products Co. v. Du Bois,* 312 U. S. 510.)

"The decision below is in direct conflict with that of the Circuit Court of Appeals of the Seventh Circuit in *In re Chicago, M., St. P. & P. R. Co.*, 124 F. (2d) 754."

III.

THE COURT ERRED IN RETAINING JURISDICTION OF THE CAUSE, IN FIXING A TIME LIMIT WITHIN WHICH THE BONDS COULD BE DEPOSITED FOR PAYMENT AND IN ENJOINING THE CREDITORS FROM PURSUING ANY RIGHTS THEY HAD IN THE STATE COURTS OR OTHERWISE.

There is no provision whatever in Sections 401, 402, Title 11, U. S. C., authorizing the court to issue any injunction whatsoever by the final decree. No doubt the court can by any appropriate means control its proceedings, but once the final decree has been entered it would appear that whatever the jurisdiction of the court may have been, it is at an end. Furthermore, the decree is entered in injunctive form and it should comply with Title 28, Section 383, U. S. C. It does not do so. (See *Kersh Lake Drainage District v. Johnson*, 157 S. W. (2d) 39; *Toucey v. N. Y. Life Ins. Co.*, 62 S. Ct. 139; Jud. Code 265 (28 U. S. C. A. 379); *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U. S. 4, 8, 9.)

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the court below reversed and the proceedings directed to be dismissed.

Dated, San Francisco, California,
April 24, 1942.

Respectfully submitted,
PETER TUM SUDEN,
GEORGE THOMAS DAVIS,
Counsel for Petitioner.

(Appendix Follows.)